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November 26, 2007

The Honorable Benjamin H. Grumbles
Assistant Administrator for Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Grumbles:

I am writing about your testimony before the House Committee on Oversight and Government Reform on October 31, 2007, regarding the injection of diesel fuel into natural gas wells as a hydraulic fracturing fluid.

In your written testimony, you described the 2003 Memorandum of Agreement (MOA) between EPA and three companies which provide hydraulic fracturing services: Halliburton Energy Services, Inc., Schlumberger Technology Corporation, and BJ Services Company. This MOA, which appears to be unenforceable, had been executed to address EPA's concerns that benzene, toluene, ethyl benzene, and xylene (the BTEX compounds) were being introduced into underground sources of drinking water during hydraulic fracturing activities. Your written testimony stated that these companies "have certified in written reports that they have converted to non-diesel fluids and are in full compliance with the MOA."¹ You also testified orally that EPA was "monitoring to see if the three signatories were living up to that agreement" on "an annual basis."²

Contrary to your testimony, however, the documents EPA has provided to the Committee to support your testimony are not certified statements of compliance. Rather, they are three informal e-mails from the companies.

¹ House Committee on Oversight and Government Reform, Testimony of Benjamin H. Grumbles, *Hearing on Oil and Gas Exemptions in Federal Environmental Protections*, 110th Cong., 7 (Oct. 31, 2007) (online at <http://oversight.house.gov/documents/20071031143047.pdf>).

² House Committee on Oversight and Government Reform, *Hearing on Oil and Gas Exemptions in Federal Environmental Protections*, 110th Cong., 7 (Oct. 31, 2007) (online at <http://oversight.house.gov/story.asp?ID=1586>).

These e-mails show that on the morning of October 29, 2007, two days prior to your appearance before the Committee, EPA staff contacted the three companies in order to determine whether the companies continued to comply with the MOA. On October 30, EPA submitted your written testimony to the Committee. However, only one company had responded to EPA by the time your testimony was submitted. On October 29, an Assistant General Counsel for Halliburton e-mailed EPA:

Yes, Halliburton is still abiding by the terms of the 2003 MOU. Please give me a call if you would like to discuss further. Thanks.³

The other two e-mails were not received by EPA until after your testimony was submitted to the Committee. Schlumberger's e-mail was received by your staff on the morning of October 31, 2007. It simply stated:

Yes we are still working under and abiding by the terms of the Memorandum of Agreement for the Elimination of Diesel Fuel in Hydraulic Fracturing Fluids Injected into Underground Sources of Drinking Water During Hydraulic Fracturing of Coalbed Methane Wells. Thanks.⁴

BJ Services' e-mail was received just minutes before the hearing was gavelled to order. It stated:

BJ Services has and will continue to honor the voluntary Memorandum of Agreement with the US Environmental Protection Agency to eliminate the use of diesel fuel in hydraulic fracturing fluids for coalbed methane hydraulic fracturing activities. In those operating districts from which BJ Services conducts fracturing applications in CBM wells, we have converted to non-diesel based fracturing slurries for all fracturing Fluid systems employed.⁵

Your testimony also states that "the three companies ... have converted to non-diesel fluids." Of the three responding companies, however, only BJ Services explicitly states that diesel fuel is no longer used. This is relevant because a company can be in compliance with the MOA and still use diesel fuel as a fracturing fluid. The MOA merely requires that the company

³ E-mail from Ruth Pierce, Halliburton Law Department, to Jeff Jollie, U.S. EPA (Oct. 29, 2007).

⁴ E-mail from Curtis Boney to Jeff Jollie, U.S. EPA (8:14 a.m., Oct. 31, 2007).

⁵ E-mail from Harold D. Brannon, BJ Services, to Jeff Jollie, U.S. EPA (9:56 a.m., Oct. 31, 2007).

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"notify the Assistant Administrator ... within 30 days after any decision to re-institute the use of diesel fuel additives."⁶ The MOA does not require that this notification be in writing.

You assured the Congress and the public that the 2003 MOA was being actively monitored and complied with. But the basis for your statement appears to be less than impressive: a hastily collected set of three e-mails amounting to just half a dozen sentences.

If EPA has a solid basis for its assurances that these companies are not using diesel fuel when fracturing oil and gas wells, please provide it to the Committee.

I would appreciate a response to this request by December 12, 2007. If you have any questions regarding this letter, please contact Greg Dotson or Gilad Wilkenfeld of the Committee staff at (202) 225-4407. Thank you for your continued cooperation with the Committee's oversight efforts.

Sincerely,



Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

⁶ Memorandum of Agreement between the United States Environmental Protection Agency and BJ Services Company, Halliburton Energy Services, Inc., and Schlumberger Technology Corporation (Dec. 12, 2003) (online at http://www.epa.gov/OGWDW/uic/pdfs/moa_uic_hyd-fract.pdf).